



October 18, 2016

The Honorable Jacob J. Lew
Secretary
Department of the Treasury
1500 Pennsylvania Ave., NW
Washington, DC 20220

The Honorable John A. Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Mr. Jamal El-Hindi
Acting Director & Deputy Director
Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183

Re: RIN 1506-AB26, Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations – Reports of Foreign Financial Accounts

Dear Messrs. Lew, Koskinen and El-Hindi:

The American Institute of CPAs (AICPA) submits the following comments in response to the notice of proposed rulemaking (the “proposal”), RIN 1506-AB26,¹ Amendment to the Bank Secrecy Act Regulations, issued on March 1, 2016, by the Financial Crimes Enforcement Network (“FinCEN”). The proposal revises the regulations which implement provisions of the Bank Secrecy Act (BSA)² regarding FinCEN Form 114, *Report of Foreign Bank and Financial Accounts* (FBAR). These comments were developed by the AICPA International Taxation Technical Resource Panel and approved by the Tax Executive Committee.

BACKGROUND

The BSA contains provisions authorizing the Secretary of the Treasury (“Secretary”) to require taxpayers who maintain a relationship with a foreign financial agency to keep certain records and file reports. The regulations implementing this authority are located at 31 CFR 1010.350, 1010.306 and 1010.420. In general, the existing regulations require any taxpayer who has a financial interest in or signature authority over foreign financial accounts with a total value exceeding \$10,000 during the previous calendar year to file an FBAR report by June 30th of each year.

In 2011, FinCEN began issuing a series of annual exemptions from the FBAR filing requirement for certain officers and employees of businesses who have signature authority over but no financial interest in a foreign financial account. In addition, FinCEN has not required taxpayers who have a reporting requirement for more than 25 separate foreign financial accounts on their annual FBAR to report detailed information on each account.

¹ [Federal Register, Vol. 81, No. 47.](#)

² [Public Law No. 91-508.](#)

The Honorable Jacob J. Lew
The Honorable John A. Koskinen
Mr. Jamal El-Hindi
October 18, 2016
Page 2 of 5

Taxpayers with more than 25 applicable accounts are only required to report the total number of accounts and maintain detailed records of them for inspection by FinCEN, upon request.

The *Surface Transportation and Veterans Health Care Choice Improvement Act of 2015*³ (“the Act”), modified the due date for filing FBAR returns beginning in 2017 from June 30th to April 15th, and provided for an extension to October 15th. The change in filing deadlines aligns the due date of the FBAR with those for Form 1040, *U.S. Individual Income Tax Return*.

The proposal, in addition to implementing the change in due date, updates the available filing exemption for officers and employees with signature authority, but no financial interest in a foreign financial account. It will also require filers with 25 or more accounts to begin reporting detailed information on each account on their annual FBAR filing.

SPECIFIC COMMENTS

Filing Exemptions

Recommendation

The AICPA recommends that FinCEN continue to provide an exemption from filing an FBAR to officers and employees of certain federally-regulated entities for accounts over which they have signature authority but no financial interest.

Background and Analysis

Under the current provisions of 31 CFR 1010.350(f)(2), officers and employees of certain federally-regulated entities are exempt from FBAR reporting for accounts over which they have signature authority but no financial interest. The proposal provides a broader exemption which applies to officers and employees of any business entity.

Under the proposal, individuals with signature authority but no financial interest in an account, are exempt from FBAR reporting provided the account is 1) reported by their employing entity or another entity in the same corporate or business structure; 2) the reporting entity maintains certain information on these individuals for at least 5 years; and 3) the reporting entity has a financial interest in the account.

The AICPA appreciates that FinCEN is providing a broader exemption for officers and employees, which will ease their compliance burden without having a negative impact on FinCEN’s ability to track these foreign financial accounts. However, we are concerned that a small subset of taxpayers currently exempt from reporting may not qualify for an exemption under the proposed revision.

³ [Public Law No. 114-41](#).

The Honorable Jacob J. Lew
The Honorable John A. Koskinen
Mr. Jamal El-Hindi
October 18, 2016
Page 3 of 5

Currently, officers and employees of an investment advisory firm who have signature authority over the foreign accounts of a client entity (such as mutual fund) are not required to report the accounts on their personal FBAR, provided both the firm and client entity are registered with the Securities and Exchange Commission (SEC). The proposal suggests that these individuals will have to file an FBAR, listing the accounts because their employer does not have a financial interest. We believe that this change in the exemption rules may expose a new class of individuals to an unnecessary, expensive, time consuming and duplicative reporting requirement. We recommend that FinCEN restore the additional limited exception in the final regulations.

Recommendation

The AICPA recommends that with regards to individuals who had their FBAR filing requirement deferred by FinCEN Notices 2011-1, 2011-2, 2012-1, 2012-2, 2013-1, 2014-1 and 2015-1, FinCEN permanently waive the filing requirement related to the accounts which were properly reported at the time, on an FBAR, by their employer or another entity within the same corporate structure.

Background and Analysis

In a series of notices dating back to 2011, FinCEN deferred the FBAR filing requirements for certain individuals with signature authority over but no financial interest in designated foreign financial accounts. In most cases, the individuals granted deferral would not have had a filing requirement if the proposed exemption under 31 CFR 1010.350(f)(2) had been in effect during the year(s) in question. We believe that requiring these individuals to file these previously deferred returns will provide little or no benefit to FinCEN, while imposing a significant burden on the affected taxpayers.

Reporting 25 or more accounts

Recommendation

The AICPA recommends that FinCEN allow FBAR filers who report 25 or more accounts to submit a portable document format (PDF) attachment, provided the attachment contains all of the detailed information currently required on Form 114.

Background and Analysis

The AICPA recognizes the rationale behind FinCEN's decision to eliminate the ability for taxpayers required to report 25 or more accounts to simply maintain the detailed information on each account for inspection upon request. However, we are concerned that the existing electronic reporting process and related form will generate a considerable burden in terms of time, effort and cost to those taxpayers affected by this change.

The Honorable Jacob J. Lew
The Honorable John A. Koskinen
Mr. Jamal El-Hindi
October 18, 2016
Page 4 of 5

Allowing taxpayers to provide an attachment to their FBAR filing containing the required information is consistent with other federal tax filing requirements, such as the reporting of transactions on Form 8949, *Sales and Other Dispositions of Capital Assets*.

Filing Extensions

Recommendations

The AICPA recommends that any taxpayer who submits a timely extension request for their calendar year federal income tax return should automatically receive a corresponding extension to October 15th to file their FBAR. Requiring the submission of two separate extension requests has the potential to create taxpayer confusion and result in unintentional failures to extend the FBAR due date.

The AICPA also recommends making available on the FinCEN website, a simple to complete electronic extension request, for use by those taxpayers who do not request a filing extension of their federal income tax return. In addition, FinCEN should coordinate with tax preparation software vendors to ensure that both tax professionals and individual taxpayers have ready access for electronic filing of FBAR extensions through their products.

In addition, the AICPA recommends that the final regulations include a provision to grant an automatic extension until June 15th to FBAR filers located overseas or who maintain their books and record overseas. This provision is necessary to satisfy the statutory requirement in the Act, to provide a “provision for an extension under rules similar to the rules in Treas. Reg. section 1.6081-5.”

Background and Analysis

Calendar year taxpayers with a tax home located overseas, military personnel stationed overseas and certain business entities whose books and records are maintained overseas have been granted an automatic extension to file their federal income tax returns until June 15th each year. The Act requires a similar provision to apply for FBAR filings. However, the proposal contains no reference to such a filing extension. By adding language to the final regulations granting FBAR filers in the circumstances described above, an extension to June 15th, will ensure that the final regulations are in alignment with the Act.

* * * * *

The AICPA is the world’s largest member association representing the accounting profession, with more than 418,000 members in 143 countries and a history of serving the public interest since 1887. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide

The Honorable Jacob J. Lew
The Honorable John A. Koskinen
Mr. Jamal El-Hindi
October 18, 2016
Page 5 of 5

services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

We appreciate your consideration of our comments and welcome the opportunity to discuss these issues further. Please feel free to contact me at (801) 523-1051 or tlewis@sisna.com; Blake Vickers, Chair, AICPA International Taxation Technical Resource Panel, at (713) 753-5493 or blake.vickers@kbr.com; or Jonathan Horn, Senior Technical Manager – AICPA Tax Policy & Advocacy, at (202) 434-9204 or jhorn@aicpa.org.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Troy K. Lewis". The signature is written in a cursive style with a large, sweeping initial "T".

Troy K. Lewis, CPA, CGMA
Chair, AICPA Tax Executive Committee